



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/767,603	01/22/2001	Brennan J. McTernan	4700-5	2524

29858 7590 08/25/2004

BROWN, RAYSMAN, MILLSTEIN, FELDER & STEINER LLP  
900 THIRD AVENUE  
NEW YORK, NY 10022

EXAMINER

WILLETT, STEPHAN F

ART UNIT PAPER NUMBER

2141

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/767,603

Applicant(s)

MCTERNAN ET AL.

Examiner

Stephan F Willett

Art Unit

2141

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/21, 8/2/01; 2/11/2</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103 and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).
2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
3. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Choquier et al. with Patent Number 5,951,694 in view of Battat et al. with patent Number 5,958,012 and Tracton et al. with Patent Number 6,470,378.
4. Regarding claim(s) 1, 7, Choquier teaches a computer network topology determination system. Choquier teaches a producer/user to specify connections, col. 10, lines 47-61. Choquier teaches flow of data between elements, col. 10, lines 38-46. Choquier teaches element locations

Art Unit: 2141

and identification, col. 11, lines 44-57. Choquier teaches processing power and bandwidth, col. 11, 5, lines 26-40, 65-67, respectively. Choquier teaches the invention in the above claim(s) except for explicitly teaching presentation data structures. Choquier and Battat teaches the invention in the above claim(s) except for explicitly teaching tests on the client computer. In that Choquier operates to generate topology outlines, the artisan would have looked to the computer network representation arts for details of implementing topology presentations. In that art, Battat, a related network manager, teaches a "comprehensive database describing every computer-related asset on a network", col. 7, lines 63-64 in order to provide a view to the makeup of the network. Battat specifically teaches "this module performs the actual graphics rendering of all visible objects", col. 9, lines 39-41 and at col. 8, lines 21-25. Tracton specifically teaches "testing the client capabilities", col. 6, line 7. Further, Battat suggests that "a view may also display internal hardware, firmware, and software of any network component", abstract, lines 14-16 in implementing his network management system. The motivation to incorporate clear graphical displays insures that a user friendly environment is maintained. Thus, it would have been obvious to one of ordinary skill in the art to incorporate the display as taught in Battat into the topology system described in Choquier because Choquier operates with topology data and Battat suggests that optimization can be obtained when displaying topology data. Therefore, by the above rational, the above claims are rejected.

5. Regarding claims 2, 8, Tracton teaches testing CPU speed, col. 6, line 54. Thus, the above claim limitations are obvious in view of the combination.

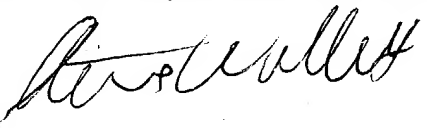
6. Regarding claims 3-6, 9-12, the Choquier, Battat and Tracton patents discloses the method of the preceding claims. The Choquier, Battat and Tracton patents do not explicitly

Art Unit: 2141

disclose legacy detailed CPU speed indicators. However, Official Notice is taken MPEP 2144.03 (a)) that vertices transformations, fill rates, and texture map read rates are well known in the art to insure speed rate is quantified. It would have been obvious to one of ordinary skill in the art at the time of the application's invention to test further detailed speed indicators to obtain the advantages of accuracy. By the above rational, the claim is rejected.

*Conclusion*

1. Prior art made of record and not relied upon is considered pertinent to applicant's disclosure is disclosed in the Notice of References Cited. A close review of the references is suggested. The other references cited teach numerous other ways to create dynamic data presentations, thus a close review of them is suggested.
2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephan Willett whose telephone number is (703) 308-5230. The examiner can normally be reached Monday through Friday from 8:00 AM to 6:00 PM.
3. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia, can be reached on (703) 305-4003. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-7239.
4. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-9605.

  
Stephan Willett

Patent Examiner

Application/Control Number: 09/767,603

Page 5

Art Unit: 2141

August 9, 2004